NOTICE TO ATTORNEYS

RE: CHIEF JUDGE BIHARY'S NEW Open Calendar Procedures

In addition to using open calendar procedures for Motions for Relief from the Automatic Stay, Judge Bihary is also adopting the Open Calendar Procedures, effective July 1, 2004, to allow attorneys to schedule hearings (with certain exceptions listed under Case Management Procedures) in Chapter 7 and Chapter 13 bankruptcy cases. Attorneys must prepare, file, and serve a notice of hearing with every motion requiring a hearing.

Instructions for the new self-selecting hearing dates and times will be posted on the Court's website on **June 1, 2004.**

The Internet address is: http://www.ganb.uscourts.gov

Click on Chambers, then Chief Judge Bihary, then Case Management Procedures and Open Calendar Procedures.

CASE MANAGEMENT PROCEDURES

I. THE FOLLOWING TYPES OF MOTIONS/APPLICATIONS DO NOT TYPICALLY REQUIRE A HEARING. PLEASE PROMPTLY SUBMIT ORDERS TO CHAMBERS.

Please note: All Chapter 13 orders with the exception of orders on Default

Motions and Orders on Motions for Ex Parte Relief from Stay under BLR 4001, N.D.Ga.

(uninsured vehicle) must be signed by the Chapter 13 Trustee before submission to

Chambers.

- Motions/Applications to Employ Professionals, Special Counsel.
- Motions to Suspend Payments in Chapter 13 Cases.
- Motions to Extend Time to File Schedules, etc.
- Motions to Vacate or Terminate EDO Order.
- Motions to Withdraw as Counsel OR Substitution of Counsel.
- Motions to Take Bankruptcy Rule 2004 Examination.
- Motions for Ex-Parte Relief from Stay. (Please see BLR 4001, N.D.Ga. [related to insurance on vehicles, boats, airplanes])
- Motions to Dismiss a Duplicate Case through Inadvertent Filing of Petition.
- Motions in Chapter 11 cases to Set Bar Dates to file Proof of Claims.
- II. <u>EXCEPTIONS</u>: HEARINGS ON THE FOLLOWING MOTIONS/APPLICATIONS MAY <u>NOT</u> BE SET BY USING THE OPEN CALENDAR PROCEDURES. PLEASE BRING OR SEND A COPY OF THE FILED MOTION WITH ORIGINAL NOTICE OF HEARING TO JANETTE WASHINGTON, COURTROOM DEPUTY CLERK, TO OBTAIN THE DATE AND TIME OF THE HEARING. IT WILL BE YOUR RESPONSIBILITY TO SERVE THE NOTICE OF HEARING ON ALL INTERESTED PARTIES IN THE MOST EXPEDITIOUS MANNER POSSIBLE AND FILE A CERTIFICATE OF SERVICE PRIOR TO THE HEARING.
 - Any motions in adversary proceedings.
 - Any matters in Chapter 11 cases other than motions for relief from stay expected to take less than 15 minutes.
 - Hearings on any matters that will take more than 15 minutes.
 - Any Emergency motions or requests for expedited hearings or for shortened time.
 - Motions to Reimpose the Automatic Stay.
 - Contested matters that require evidentiary hearings and trials.
 - Requests for pre-trial conferences and/or status conferences.
 - Motions to avoid lien and Motions to Redeem (Court will Schedule hearings if Responses are filed).
 - Motions for valuation of collateral.

III. SPECIAL NOTE:

- 1. Any motions scheduled with insufficient notice time will not be heard.
- 2. Any motions scheduled with the wrong date, time, or location will not be heard.
- 3. Any motions scheduled after a session or date has been removed as an available hearing date will not be heard.

IV. PREPARING PROPOSED ORDERS:

If you are instructed by the court to prepare an order after a hearing, you must circulate it among all other interested parties before submitting it to Chambers, and you must telephone Chambers immediately upon becoming aware that another party takes the position that the proposed order does not accurately reflect the Court's ruling.

If all interested parties have not indicated consent or no opposition to a proposed order and if the motion was heard, the order should either accurately reflect the Court's findings and conclusions or state that it is based on the findings of fact and conclusion of law stated by the Court on the record at the hearing.

Proposed orders on motions to which <u>no opposition</u> was interposed at the call of the calendar and which the court did not hear may not recite findings of fact or conclusions of law, but must instead state as grounds for granting the relief requested the lack of opposition to the motion.

Compliance with the local rules of the Bankruptcy Court of the Northern District of Georgia is a necessity. The most common omissions are:

- 1. Unsigned, incomplete and/or omission of the preparer's block, see **BLR 9013-(b)**, **N.D.Ga.**;
- 2. Omission of hearing date, if applicable, see **BLR 9013-3(a), N.D.Ga.**; and
- 3. Omission of the distribution list, see BLR 9013-3 (c)(2), N.D.Ga.
- V. <u>CONFLICTS AND CONTINUANCES</u>: Counsel with conflicts should send a conflict letter to the Court in advance listing their conflicts and proposed resolutions. Counsel are expected to comply with BLR 5071, N.D.Ga. In addition, mass calendars are a way of life in Bankruptcy Court, and it is not unusual for different judges to schedule mass calendars at the same time. The judges understand that this scheduling problem gives rise to conflicts and are generally accommodating to counsel. If you have a mass calendar conflict that requires you to be in another courtroom in the bankruptcy court, call or report to the courtroom deputy clerk before the start of the hearing to identify your cases. Your cases will be marked and held for your report.

In the event that counsel desires to obtain a continuance of a case on the Chapter 13 confirmation calendar, counsel should contact the Chapter 13 Trustee directly at 404. 525.2555. With respect to all other continuances, parties should contact Janette Washington, Courtroom Deputy, at 404.215.1033.

VI. **EVIDENTIARY HEARINGS AND TRIALS**:

EXHIBITS - All exhibits should be identified and marked sequentially with either plaintiff's or defendant's exhibit stickers <u>prior</u> to trial. You must prepare a sufficient number of copies of each exhibit to provide <u>two pre-marked copies to the Court</u> and <u>one pre-marked copy to each party</u>. Bring the actual exhibits to be used or offered in evidence to the trial. Don't forget a copy for yourself. **The Court's copies should be delivered to Chambers at least five (5) business days prior to the trial date.** An exhibit list with a brief description of each exhibit and a witness list with the names of the will call and may call witnesses must accompany the court's copies of the exhibits. Copies of the exhibits and the exhibit list along with the witness list should be provided to each party five (5) days prior to the trial. The Court retains all exhibits offered in evidence until the order or judgment resolving the matter for which the exhibits were offered becomes final and no longer subject to appeal. If you do not pick up your exhibits from Chambers within thirty (30) days after the order and/or judgment becomes final and no longer subject to appeal, they will be deemed abandoned and the court may dispose of them.

- VII. <u>SETTLEMENTS</u> If you settle an adversary proceeding or contested matter that has been set for a trial or hearing, notify the Courtroom Deputy Clerk immediately. Unless otherwise permitted by the Court, if the parties (or their counsel) do not submit to the Court, at least 24 hours in advance of a trial or hearing, the written terms of a settlement acknowledged by each party or counsel, you must appear at the scheduled trial or hearing to read the details of the settlement into the record. If an anticipated settlement is not finalized prior to the trial, <u>unless otherwise permitted by the Court</u>, be prepared to try the matter.
- VIII. Any motion with respect to which a hearing and notice of hearing has not been properly set according to the Court's instructions within twenty-five (25) days of the filing of the motion in question may be dismissed for failure to prosecute without further notice or hearing.

<i>CAUTION</i> : <u>Alwa</u>	<u>ys check the list of</u>	<u>currently</u>	available	<u>dates and</u>	times	<u>when</u>
settii	ng a hearing.	•				
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INSTRUCTIONS ON MOTIONS FOR RELIEF FROM STAY AND THE OPEN CALENDAR PROCEDURE IN CASES ASSIGNED TO JUDGE BIHARY

- 1. This procedure applies to attorneys filing motions for relief from the automatic stay in any case.
 - In a bankruptcy case assigned to Judge Bihary, an attorney who files a motion for relief from stay **must**, with certain exceptions described below, prepare, serve, and file a notice of hearing. Attorneys who file a motion and notice of hearing electronically should set the hearing while filing the motion and/or notice of hearing.
 - Do **not** use this procedure if the parties have entered into a proposed consent order that is submitted to Chambers at the time the motion is filed. The proposed consent order may be attached to the motion, transmitted by mail, or delivered to Chambers.
 - Emergency motions for relief from the automatic stay and motions to reimpose the stay may **not** be set using the open calendar procedure.
- 2. Select a date and time appropriate for the motion to be heard from the list of **currently available dates.** (There is nothing to do on this website except to find an appropriate date, time, and location for the hearing you want to schedule; if you file electronically, you will be prompted on one screen to insert the date, time, and location you selected, and if you file on paper, you plug in the date, time, and location in the notice of hearing that you will serve with your motion.)

THE MOTION, NOTICE OF HEARING AND CERTIFICATE OF SERVICE MUST BE FILED AND SERVED AT LEAST FOURTEEN (14) DAYS BEFORE THE HEARING DATE, EXCEPT IN THE CASE OF MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 1301(c)(2), IN WHICH CASE THE MOTION, NOTICE OF HEARING AND CERTIFICATE OF SERVICE MUST BE SERVED AND FILED AT LEAST TWENTY-ONE (21) DAYS BEFORE THE HEARING DATE.

- If all parties consent to the relief requested in the motion, no hearing need be set.
- Always check the list of currently available dates when setting a hearing because a date may be removed from the list.
- 3. Prepare the notice of hearing into which you will insert the date, time, and location that you selected from the list of available dates. Combine the notice with the motion, brief, if any, and certificate of service into one document, which, if you file electronically, will be filed as a Motion Event. Click here for a suggested form of notice and certificate of service. (This is a PDF document.)
 - ECF participants (attorneys registered to file documents electronically) are authorized to fill in the date, time, and place on the hearing information screen. (Make sure you fill in all three fields). Hearings before Judge Bihary are in Atlanta in Courtroom 1402. On the screen permitting the user to enhance docket text, type in the words "and Notice of Hearing" after the description of your pleading. Make sure the notice of hearing is included as a part of the PDF document but that it follows the motion, even though when you serve it you may put the notice of hearing on top.

- Whether filed on paper or electronically, the certificate of service must mention service of both the motion and the notice of hearing.
- If you file paper pleadings, deliver a copy of the notice of hearing and certificate of service to Chambers at least two (2) weeks prior to the hearing date.
- If you file electronically, do **not** deliver a paper copy to the Clerk or to Chambers.
- 4. There is no need to call Chambers to find out if your motion has been put on the calendar. You may view the calendar online in the CM/ECF system, which you may access through **PACER**, even if you do not file electronically.
- 5. <u>Reset Hearings</u> You may use the Open Calendar Procedure to reset a hearing on a motion for relief from stay **if all parties agree**, but you must follow the above instructions on filing the Notice of Hearing. If all parties do not agree, continuances should be requested by motion.

OPEN CALENDAR PROCEDURES

Instructions for Self-Selecting Hearing Dates and Times for Motions/Applications Other Than Motions for Relief from Stay in Cases Assigned to Chief Judge Bihary

- 1. The open calendar procedure applies to attorneys who file motions/applications in Chapter 7 and Chapter 13 cases (see exceptions listed under Case Management Procedures). Judge Bihary has previously adopted self-calendaring for motions for relief from the automatic stay (click here) and Judge Bihary is adopting the open calendar procedures for other types of motions/applications for certain calendars beginning July 1, 2004. This is not an interactive website. You cannot set a hearing from this website.
- 2. From the list of currently available dates, select date, time, and appropriate location (Atlanta) on which you want your motion/application to be heard. Available open calendar dates are listed at the end of these instructions. There is nothing to do on this website except to find an appropriate date, time, and location for the hearing you want to schedule. If you file electronically, you will be prompted on one screen to insert the date, time, and location you selected, and then you must fill in the date, time, and place on the hearing information screen. (Make sure you fill in all three fields). Hearings for Atlanta cases before Chief Judge Bihary are in Courtroom 1402, 75 Spring Street, SW, Atlanta, GA. On the screen permitting the user to enhance docket text, type in the words "and Notice of Hearing" after the description of your pleading. Make sure the notice of hearing is included as part of the PDF document but it should follow the motion, even though when you serve the motion you may attach the notice of hearing to the front of the motion. If you file on paper, you simply insert the date, time, and location in the notice of hearing that you will serve with your motion. Whether filed on paper or electronically, the certificate of service must mention service of both the motion and the notice of hearing.
- 3. Prepare the Notice of Hearing into which you will insert the date, time, and location that you selected from the list of available dates. Combine the notice with the motion, brief, if any, and certificate of service in one document, which, if you file electronically, will be filed as a Motion Event. Click here for suggested <u>form of notices and certificate of service</u>. (Atlanta). (These are PDF <u>documents</u>).
- 4. With respect to all motions filed on the open calendar, make sure they are <u>filed timely and served</u> with sufficient notice of same as required by Bankruptcy Code, Rules and Official Forms (e.g. Objection to Proof of claim requires a thirty-three (33) days notice time).

Hearings set that do not meet the notice requirements of the Bankruptcy Code and/or Rules with respect to length of time of notice WILL NOT BE HEARD. (Please also see instructions for setting hearings on Motions for Relief.)

5. There is no need to call Chambers to find out if your motion has been put on the calendar. You may review the calendar in the CM/ECF system, which you may access through PACER, even if you do not file electronically.

- 6. **RESETS:** You may use the Open Calendar Procedure to reset a hearing date <u>only</u> if all parties agree.
- 7. This procedure may not be used by non-attorneys. All pro se pleadings will be reviewed and hearings, if appropriate, will be scheduled by the Courtroom Deputy.

Words in *[italics and BOLD within the brackets]* signal that the person preparing the form must customize the form and insert information to fit the case as indicated.

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

IN RE:	: CASE NO. [xx-xxxxx]
[NAME OF DEBTOR(S)],	: CHAPTER [xx]
Debtor(s).	: JUDGE BIHARY
[NAME OF MOVANT(S),	
Movant(s),	
v.	: CONTESTED MATTER
[NAME OF RESPONDENT(S)],	:
Respondent(s).	; ; ;

NOTICE OF HEARING

PLEASE TAKE NOTICE that [NAME OF MOVANT(S) has filed [State type of pleading, e.g., Motion for Relief from Stay or Objection to Claim] and related papers with the Court seeking an order [State relief sought in the motion or objection].

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on *[state type of pleading: motion, application or objection]* in Courtroom **1402**, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia, at *[xxxx A.M./P.M.](time depending on which chapter)* on *[STATE DATE]*.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Spring Street, S.W., Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

(IF THE MOTION IS FOR RELIEF FROM STAY, COUNSEL IS REQUIRED TO ADD

THIS STATEMENT) If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

Dated: **[DATE]** SIGNATURE

[NAME OF COUNSEL]
Counsel for Movant
[ADDRESS, TELEPHONE, BAR NO.]

Certificate of Service

I, [name of person serving pleadings], certify that I am over the age of 18 and that on [DATE], I served a copy of the foregoing Motion for Relief from Stay and Notice of Hearing by first class U.S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated:

State name and address of each person or entity to which copies were mailed. READ AND COMPLY WITH BANKRUPTCY RULE 7004 CONCERNING HOW TO EFFECT PROPER SERVICE.

Dated: [DATE]

Signature of Person Serving Pleadings
[Name and Address of person serving pleadings]